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Client Update

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Department of Labor Proposes Salary Requirement of \$54,440 for White Collar Overtime Exemption

Proposal Likely to Take Effect in 2016

The United States Department of Labor (“DOL”) issued its long awaited proposed regulations relating to the Fair Labor Standards Act white collar overtime exemption. The DOL is accepting comments from the public for the next sixty days, after which the DOL will review the comments and then finalize the proposed regulations. The final rule is not expected to change much if at all following a review of any public comments. Importantly, the final rule is also not expected to take effect until sometime in 2016, barring any court action that delays implementation.

The white collar exemption exempts from overtime employees who (with a few exceptions) are paid on a predetermined and fixed salary that is not subject to reduction because of variations in the quality or quantity of work performed. This is referred to as the “salary basis test”. The amount of the salary paid must meet the specific amount which Congress set in 2004 at \$455.00 a week. In addition to an employee satisfying the salary requirement, the employee must also satisfy a job duties test that includes the performance of executive, administrative, or professional duties as defined by the regulations.

No Change (For Now) in the Job Duties Test for the Executive, Administrative and Professional Exemptions

Notably, the DOL has opted not to propose a change in the job duties test. Rumors had circulated that the DOL would make it more difficult for employees to satisfy the job duties test. Instead of changing the job duties test as part of this proposal, the DOL has instead requested input on whether such a change should occur. The DOL may issue proposed revisions to the job duties test after further evaluation of that issue.

Salary Basis Requirement Likely to Increase to \$50,440 in 2016 Followed By Automatic Annual Escalator

The DOL proposes to increase the salary requirement from its current \$23,660 a year (\$455.00 a week) to \$47,892 a year (\$921.00) a week. Because the DOL is also proposing an automatic escalator, the DOL is expected to increase this requirement in 2016 to \$50,440.00 a year (\$970.00 a week). This means that once the regulation takes effect, whether an employee satisfies the job duties test for executive, administrative or professional jobs will be immaterial if the employee has a weekly salary in 2016 of less than \$970.00.

The DOL estimates that 4.6 million employees (25% of all employees currently exempt from overtime and subject to the salary basis requirement) will lose their exempt status and be entitled to the payment of overtime for any hours worked in a week in excess of forty.

DOL Proposes to Increase Earnings Requirement for Highly Compensated Employee Exemption

The DOL also proposes to change the salary requirement for the separate exemption provided for certain highly compensated employees from \$100,000 a year to a proposed \$122,148 a year. To qualify for this exemption, such highly compensated employees must also perform at least one of the job functions set forth in the job duties test for executive, administrative or professional jobs.

Impact on Employees and Employers

The DOL recognizes that some employers will reduce the hours worked by employees who lose the overtime exemption. Employers may also establish hourly rates for these new non-exempt employees to account for some of the overtime that the employees are expected to work. The DOL acknowledges that some employees who become non-exempt may actually earn less money as a result of this change in exempt status. DOL estimates that the change could cost employers in excess of one billion dollars in just the first year of implementation.

Recommended Action

All employers should assess the jobs of those employees who are currently classified as exempt under any of the executive, administrative and professional exemptions. For those employees who currently earn less than a fixed weekly salary of \$970.00, employers will need to determine whether to increase such employees' weekly salary to \$970.00 or whether to convert such employees to non-exempt employees entitled to the receipt of overtime pay. Please note, the proposed regulation is just that – a proposal – and does not require employers to make any changes yet. No action should be implemented until the regulations are finalized.

In addition to the above assessment, employers should assess the job duties of those employees who will remain exempt under one of the white collar exemptions to make sure that the employer also satisfies that part of the exemption requirement.

Please contact either Peter Bennett (pbennett@thebennettlawfirm.com) or Rick Finberg (rfinberg@thebennettlawfirm.com) for assistance.